With Court rulings

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CIVIL ACTION NO. 83-2864 SA

ROSE D. and ANTONIO CIPOLLONE, her husband,

Plaintiffs,

vs.

LIGGETT GROUP, INC., a Delaware Corporation; PHILIP MORRIS INCORPORATED, a Virginia Corporation; LOEWS THEATRES, INC., a New York Corporation,

Defendants.

Deposition of:

NELLIE LEE, M.D.

TRANSCRIPT of testimony as taken by and before NANCY C. BENDISH, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, at the offices of Nellie Lee, M.D., 190 Euclid Avenue, Ridgefield Park, New Jersey, on Thursday, December 11, 1986, commencing at 2:45 in the afternoon.

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A P P E A R A N C E S: (Continued)

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N E L L I E L E E, M.D., sworn.

DIRECT EXAMINATION BY MR. DROZDOWSKI:

Q. Doctor, for the record, my name is Raymond Drozdowski. I'm an attorney with the offices of Brown, Connery. We're a law firm all the way down in South Jersey. We represent the Philip Morris Company. Philip Morris Company and two other companies, Liggett and the Loews Company, have been sued by Mr. and Mrs. Cipollone and now only by Mr. Cipollone in an action in the Federal Court. I don't know if you knew that. Did you know that?

A. Vaguely.

Q. What we're doing here today is taking a fact deposition. We're interested in finding out what you know about what the treatment and care of Mrs. Cipollone was back in 1980 and '81 when you were treating her. Am I correct in saying you did treat her back in 1980 and '81?

A. Yes.

(Exhibit D-Lee-1 marked for identification)

Q. Before we go on any further, I think everybody here should introduce themselves so you'll feel more comfortable and know who's

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involved. You've already met Mr. Darnell and talked to him for a few minutes.

(Introductions given)

Q. I'm going to show you a deposition subpoena. Were you served with this? This is a copy. Do you remember being served with that?

A. Yes.

Q. So that asked for you today to produce certain medical records pertaining to the care you rendered Mrs. Cipollone. Do you have those records with you?

A. Yes.

Q. Can you show them to me?

A. This is the whole chart of Rose.

MR. DARNELL: Is it my understanding that you've previously obtained copies of Dr. Lee's records with an authorization.

MR. DROZDOWSKI: It's my understanding we did.

MR. DARNELL: Copies were sent to me by Webster & Sheffield.

MR. DROZDOWSKI: I don't know what was sent to you by Webster & Sheffield, but I would assume they were the complete records.

Q. Dr. Lee, could I with your permission

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take this out? You'll get them back. I just want it so we can mark them and put numbers on it so that when we refer to them on the record we'll know what we're talking about. I just want to take these off the clips and then just put a marking on them and return them to you so you'll have them at the end of the day.

A. You mean out from my office?

Q. No. Take it out of this folder.

A. Sure, okay, fine.

MR. DARNELL: He wants to physically remove them from the folder.

MR. DROZDOWSKI: Would you mark this report of Dr. Lee dated April 9, 1980 as D-Lee-2.

(Exhibit D-Lee-2 marked for identification)

MR. DROZDOWSKI: Mark this as D-3. And mark this as D-4.

(Exhibit D-Lee-3 and D-Lee-4 marked for identification)

MR. DROZDOWSKI: Would you mark this as D-5.

(Exhibit D-Lee-5 marked for identification)

MR. DROZDOWSKI: We have three

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handwritten pages of office notes.

MR. DARNELL: Are they written on both sides, Mr. Drozdowski?

MR. DROZDOWSKI: Yes. Three on both sides, D-6.

(Exhibits D-Lee-6 through D-Lee-16 marked for identification)

MR. DROZDOWSKI: D-17, a letter from Mr. Sharbaugh, March 10, 1980 with an attached authorization signed by Rose Cipollone.

(Exhibit D-Lee-17 through D-Lee-19 marked for identification)

MR. DROZDOWSKI: EKG of Rose Cipollone dated January 20, 1981 as Exhibit 20.

(Exhibit D-Lee-20 marked for identification)

Q. Doctor, have you ever taken a deposition before?

MR. DARNELL: You mean given a deposition.

A. Yes.

Q. So you're familiar with what a deposition is?

A. Yes.

Q. I will give you some ground rules. I

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will ask you certain questions. If you don't hear my question, don't answer it, tell me you haven't heard it and I'll repeat it.

A. Okay.

Q. If you don't understand my question, just tell me you don't understand it and I'll rephrase it. When I get an answer from you I'll assume you've heard it and understood it and are answering it truthfully. Okay?

A. Okay.

Q. And we can't use nods, shakes of the head or shrugs. We have to have verbal responses.

A. Okay.

Q. Now, prior to being sworn in today, had you discussed this case with anyone else?

A. Just the few minutes that we talked.

Q. And who did you talk to?

A. Talked to Mr. Darnell.

Q. And what did you discuss with Mr. Darnell?

A. Just what the deposition is going to be.

Q. And what did he tell you the deposition is going to be?

A. That you're going to ask me some questions and if I don't understand, clarify. The same

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thing that you told me already.

Q. Okay. Did he say anything about the case of Rose Cipollone versus the three cigarette companies?

A. He did mention it, yes.

Q. What did he tell you about the case?

A. He said that there's a case brought on by Rose and her husband against the three cigarette companies.

Q. Did he say anything other than that?

A. No.

Q. Did he discuss anything further?

A. No.

Q. What you've just told me is basically what transpired in the few minutes with with Mr. Darnell?

A. Yes.

Q. Doctor, you are a medical doctor?

A. Yes.

Q. Do you have a specialty?

A. I'm an internist and a cardiologist.

Q. Are you board certified or non-board certified, either one of those?

A. Board certified for both.

Q. How long have you been practicing

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these specialties, Doctor?
A. Since 1975.
Q. Doctor, I show you D-Lee-6 for identification. This came from your file?
A. Yes.
Q. And these are your records, personal records on Mrs. Cipollone?
A. Yes.
Q. And that is your handwriting and you put that on those pages?
A. Right.
Q. When was the first time you saw Mrs. Cipollone for any medical treatment?
A. On January 19, 1980.
Q. Do you have an independent recollection of all the times you saw her and all the treatment you gave her?
A. All my recollection will depend on what I have in the chart.
Q. So would you please rely on the charts to refresh your recollection?
A. Sure.
Q. Doctor, who sent, or how did Mrs. Cipollone get to you on January 19, 1980?
A. She came to see me on her own.

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Q. Okay. She was not a referral?
A. No, she was not a referral.
Q. Did she tell you she was being treated by any other physicians when you saw her on January 19, 1980?
A. Let me just read this record quickly, okay?
Q. Sure.
A. She mentions something about some bladder problem, having some blood in the urine and she had a cystoscopy done two weeks ago, so that should have been done by a urologist.
Q. Do you have any idea who that was?
A. No, I don't have it on my record.
Q. When you saw her, was this the first time you had been in contact with Rose or anyone from her family?
A. Yes.
Q. What history did you receive from her?
A. Her main complaints that first visit was more of gastrointestinal, she was complaining of epigastric pain, hypertension, vomiting and bad taste in her mouth.
Q. Excuse me. As I go along you'll have to pardon me because some of the stuff I want to clear up.

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A. Okay.

Q. Epigastric pain, where is that pain?

A. Epigastric pain is stomach pain.

Q. Did she tell you how long she had all these complaints before January 19, 1980?

A. I did not write it down as far as duration on my record. I can't tell you that.

Q. Did she give you any history of being involved in an accident at that time?

A. At that time, no, she did not mention that.

Q. What other information did you get from her?

A. That she has hypertension for about six months and she was taking Aldoril 15, one tablet twice a day.

Q. What is that medication, Aldoril?

A. Yes. That's a combination of Aldomet and a diuretic.

Q. What does that do on a body, what is it supposed to do?

A. Well, we use it to treat hypertension. The diuretic gets rid of extra sodium and we feel there might be some vasodilating effect to that and the Aldoril, both of them in combination brings down the blood pressure.

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Q. Please continue.
A. That's it.
Q. There's a note here of something about diabetes.
A. She had no history of diabetes. Zero.
Q. What other past history did you take?
A. That she had a hysterectomy done in 1966 and from what she gave me in the history, that one ovary was left inside.
Q. Was that of any significance to you, Doctor?
A. Yeah. We want to find out what the patient's estrogen level would be, if the ovary were removed, both of them.
Q. Why is that important?
MR. DARNELL: In terms of --
MR. DROZDOWSKI: Treatment.
Q. In treating this patient why would you want to know what the estrogen level would be?
A. Well, as far as the present condition it probably doesn't mean anything but maybe in the future, we don't know if the patient would have hot flashes or any other symptoms referable to that, then it might help.
Q. All right. Beneath the ovary writing

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there is some other writing. What does that say?
A. Said she had a PAP smear done about a month ago.
Q. And do you know what the reading of that was?
A. I don't know.
Q. Just going back in your record again, there was something about bladder with broken vessels up at the second paragraph?
A. Yes.
Q. What does that mean to you?
A. I don't know. That's her quotation to me, if you see it's a quotation mark. That's what she said was the cause of the blood in her urine.
Q. That the bladder had some broken vessels in it?
A. That's why she was having blood.
Q. What else is in that paragraph and what does it mean to you, Doctor?
A. Well, that the patient was treated with sulphur drug by the urologist, but that she had a reaction from that. She developed swelling of the face and some fainting episodes which she thought was a bad reaction from the medication.
Q. Now, continuing on, did you take any

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further personal history?

A. Yeah. That she smokes one pack of cigarettes per day.

Q. She gave you that information?

A. Right.

Q. And what did this mean to you? Of what significance was it that you put it down?

A. Well, it's important as far as the total history is concerned. We want to know if they smoke, whether the smoking, you know, had done anything to the patient, you know, we investigate that further.

Q. Did you on that visit discuss her smoking with her?

A. I don't know. I didn't write it down here.

Q. Do you have a normal practice to discuss smoking?

A. I do to my patients, sure, I mention to them about smoking.

Q. What do you mention?

A. Well, I would advise them to stop smoking.

Q. Would it be an accurate representation that you probably advised her on that day to stop smoking?

A. I may but I don't remember.

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Q. Do you have any recollection of anything she said other than that she smoked one pack per day, with regard to smoking?

A. No.

Q. You took a family history. Could you go through that so that we make sure we've got your handwriting straightened out here?

A. Her mother died of stroke at 62 and her father died at 50 of a stroke, also. And both of them were hypertensive. There were two sisters who has hypertension. There was no history of heart attack in the family and no history of diabetes. Mother's cousin had leukemia.

Q. You then performed a physical examination upon her?

A. Yes.

Q. What were your findings?

A. The heart and lungs were negative. The blood pressure was normal, acceptable, 160 over 80.

Q. She was on medication for that at the time?

A. Yes. Her abdomen showed slight right upper quadrant tenderness and the extremities were negative.

Q. Now, how did you consider her state

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of health at that time?

A. Well, her state of health was not that bad. From the history her hypertension was fairly well controlled and her weight 129, this is not overly obese. She does have the smoking history and she had all this nonspecific abdomenal complaints which was the reason why she came to see me.

Q. What was your diagnosis or impression at that time?

A. Because I found the right upper quadrant tenderness, but the patient had a gallbladder operation done in 1965, as indicated here, so I questioned whether there is a stone in the duct and to rule out peptic ulcer disease.

Q. So at that point you hadn't established a diagnosis, you were trying to rule things out?

A. Rule out, yes.

Q. What is that on the last line beneath the peptic ulcer disease rule out, what does that say?

A. This here?

Q. Yes.

A. That's Mylanta.

Q. That's a medication?

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A. That's antacids, yes.

Q. You prescribed that to her?

A. Yes.

Q. And what else?

A. And Tagamet.

Q. What is that?

A. That is also something we use for peptic ulcer disease.

Q. Now, do you have any other recollections or notes dealing with that first visit?

A. No.

Q. Now, did you send her anywhere or did you do anything else about her problem with her abdomen?

MR. DARNELL: After that first visit?

MR. DROZDOWSKI: After that first visit.

A. Well, the next note I have of February 13 I have noted that the patient was admitted for workup at Holy Name Hospital, so I must have admitted her for tests.

Q. It's my understanding that there was a hospitalization at that hospital, Holy Name Hospital, from January 25 through -- I'm sorry, I

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don't have the dates. I know there was a hospitalization for an irritable bowel syndrome. Does this refresh your recollection?

A. Yeah.

Q. It was you who put her in the hospital?

A. Yes.

Q. Does irritable bowel syndrome sound right as one of the things you were looking at?

MR. DARNELL: She was looking at or one of the things that the hospital found?

MR. DROZDOWSKI: Either way.

Q. Were you looking for or the hospital found?

A. No. I admitted her to rule out those conditions that I mentioned, and the final diagnosis that we came up with was irritable bowel syndrome.

Q. What does that mean?

A. Some people call it nervous colitis. It's a condition where they have a lot of complaints in the bowels, like what she had, but by x-rays and by tests we don't find anything organic to explain their symptoms.

Q. So you then turned to the nonorganic

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to explain it?

A. Right.

Q. What was the nonorganic explaining it in her case?

A. Well, I didn't write it down. And from here, the only thing we found was she did have a small hiatus hernia.

Q. Okay.

A. Most of the people with irritable bowel syndrome are people who are nervous type, who are under a lot of tension, and I have a feeling I must have discussed it with her and this is the time when she mentioned about the car accident.

Q. And you are then pointing to your record of a visit of February 13, 1980?

A. Right.

Q. Would you tell us what happened on that day.

A. Okay. I did mention on my record that she was admitted to the hospital and that she was discharged with a diagnosis of irritable bowel syndrome and a small hiatus hernia. And then my next sentence said, had a bad car accident nine months ago. Since then has phobia with riding cars. This precipitated diarrhea. So it seems to

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me that now the patient is starting to confide to me and going back on the history to give me some idea when all the symptoms started.

Q. Can you continue with what more you did on February 13, 1980.

A. Okay. I gave her some medications, the Librax three times a day.

Q. What is Librax?

A. That's a combination of Librium which is anti-anxiety or anti-nerve pill and an anti-spasmodic. This works very well with people in bowel syndrome.

Q. Cuts down on anxiety and nervousness?

A. That's right.

Q. Then continue with the other medication.

A. I advised her to continue on her Aldoril.

Q. That's for hypertension?

A. Then Metamucil, two tablespoon BID.

Q. What is that, what effect does that have on the body?

A. This is a bulk laxative type but we use it in people with irritable bowel syndrome if they have a lot of diarrhea.

Q. You gave her some other?

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A. The Tagamet which she had before.

Q. What's the effect of that?

A. That reduces the acid in the stomach.

Q. Now, at that point was it your diagnosis that she had this irritable bowel syndrome?

A. Right.

Q. And did you -- was it your opinion that that was related back to the bad car accident she had about nine months ago?

MR. DARNELL: Objection.

A. Yes.

MR. DARNELL: You may answer it. I may from time to time object.

MR. DROZDOWSKI: Let me withdraw that.

Q. What was your opinion with regard to the irritable bowel syndrome and the bad car accident she described to you in the history? What was the relationship, if any?

A. Well, I feel that it is related, that from the way she described it, that this precipitated the diarrhea and that this sort of started all the problems that she had.

Q. Did the accident create a nervous condition which brought it on, or how did it work?

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I'm trying to get the cause and the effect. What did the accident do with regard to her body, as best you can explain it to me?

MR. DARNELL: Let me object to that because I don't know that this witness knows enough about the facts of the accident and the prior history of something that occurred nine months before then, when this doctor had not been treating Mrs. Cipollone.

Q. Doctor, you told us that irritable bowel syndrome normally arise in people who are nervous, anxious, irritable; is that correct?

A. Right.

Q. Is that what you found with her?

A. Right.

MR. DARNELL: Are you asking her whether she was nervous, anxious and irritable?

MR. DROZDOWSKI: Yes.

Q. Did you find that she was nervous, anxious and irritable?

A. I found her anxious, yes.

Q. Did you find that anxiousness, anxiety, that nervousness as a result of that auto accident?

A. Say that again.

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Q. Was the nervousness, anxiousness the result of the auto accident that she told you about?

A. From the history I would say yes.

Q. What course of treatment did you start at that point? Besides giving her medication, did you give her anything else?

A. Well, since she has problem with riding in cars since the accident, I advised her to take a tranquilizer before she rides a car.

Q. And what was the tranquilizer?

A. I gave her Azene.

Q. What effect does that have on the body?

A. It's a calming effect.

Q. Continue with your reports here.

A. Continue other medicine, means these medications which are listed above. And then I changed the Tagamet to just at bed time.

Q. And beneath that it says something about urinalysis?

A. Yes.

Q. Did you send her out to have a urinalysis?

A. Yes.

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Q. Why did do you that?
A. She was complaining of urgency.
Q. And what were you trying to do with the urinalysis?
A. To see if she had some urine infection.
Q. Beneath that it says RV one month; that's return visit one month?
A. Right.
Q. Down at the bottom it says WT 132. Is that her weight at the time?
A. That's her weight, yes.
Q. The next time you saw her was March 18, 1980; is that correct?
A. Yes.
Q. What can you tell us from your records about her complaints and histories and findings at that time?
MR. DARNELL: Excuse me. Did she weigh 132 in March of '80 or was that weighed in February? It's's confusing.
THE WITNESS: It's March. February was 131.
Q. So March 18, 1980 for the record she's 132 pounds. Can you answer my previous question? What were her complaints and what were

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your findings on March 18, 1980?
A. She was complaining of chest pain for about two weeks, and it was more or less constant. She was also complaining of occasional palpatation. She had cold two weeks ago. Then she mentioned about bleeding in her bladder again, two weeks ago, and was bright red. So she has an appointment with her urologist for that.
Q. What did the chest pain mean to you, Doctor?
A. Well, chest pain is a symptom.
Q. In her case, what area of symptoms would that lead to?
A. Well, I just put chest pain.
Q. Did it mean anything to you?
MR. DARNELL: That question is vague.
Q. What did it mean to you?
A. Well, it just means that I have to investigate further what it is.
Q. Did you investigate further?
A. Yes. My examination showed she had some left sternal border tenderness. That's LSB, left sternal border tenderness.
Q. What did that mean to you, Doctor?
A. That means there is some tenderness in the

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rib area. And so I felt that it was nothing related to the heart, but it was from a costochondritis.

Q. What is that?

A. That's an inflammation around the joints between the breast bone and the ribs.

Q. And did you prescribe any medication?

A. I just put there, continue medication.

Q. Do you have any other recollections of what happened on that meeting?

A. No.

Q. When is the next time you saw her?

A. April 21st, 1980.

Q. What were her complaints at that time?

A. Her complaints was headache and that she had some postnasal drip, but there was no mucous discharge.

Q. Was it any specific type of headache?

A. No, just headache.

Q. Anything else?

A. And her blood pressure was good, 132 over 80, and that she did went to the urologist for the blood in the urine, the hematuria and that the hematologist didn't find anything wrong. And that her bowels and her abdomenal complaints were

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better.

Q. What did you do with regard to treatment for her?

A. I told her to continue the pressure medication, which was the Aldoril, and gave her some decongestant.

Q. The decongestant was for what purpose, the nasal drip?

A. Yes.

Q. What is RN, whatever that is?

MR. DARNELL: Return visit.

Q. Oh, RV. Return visit in two months?

A. Yes.

Q. You next saw her on July 25, 1980. What were her complaints at that time, Doctor?

A. That she had headache and pain in the upper back.

Q. When you say upper back, what area was that? Cervical, dorsal?

A. Just upper back. Her eyes hurt and that she was not sleeping well.

Q. Did she tell you why she wasn't sleeping well?

A. No.

Q. Could you determine during that

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examination why she wasn't sleeping well?

A. I can't be sure.

Q. Would you continue with what happened that day.

A. That she also had a constant hypogastric pain.

Q. What is that?

A. Hypogastric at the lower part of the stomach, of the abdomen, and that she has still difficulty urinating.

Q. What did this mean to you, Doctor?

A. Well, hypogastric pain is usually the area where the bladder is and with the complaints of difficulty urinating, then of course you have to rule out, again, a bladder infection.

Q. Would you continue on with what happened.

A. Okay. Her blood pressure was normal, 134 over 80, and her heart and lungs were okay.

Q. Now, on the side there you have something about phobia. Did she tell you, or why did you write something about a phobia?

A. Well, we must have discussed about it, that she still have phobia about riding cars.

Q. Did she use the term "phobia" or is

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that something that you put down as a result of listening to what she said?

A. I don't know.

Q. Well, what does phobia mean?

A. Phobia means fear.

Q. So that on July 25, 1980 she still had a fear about driving cars?

A. Yes. About riding cars.

Q. Was that something that continued from the time she first told you about it up and through July of 1980?

A. I would say yes, because I said persists.

Q. Underneath that it looks like aching all over; is that correct?

A. Right.

Q. And beneath that is depressed?

A. Right.

Q. What did she tell you that made you write down depressed?

A. I don't remember what she told me. That's my clinical impression.

Q. She was depressed?

A. Yes.

Q. And what does depressed mean? When you write this down, what does it mean?

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A. I don't know what you're trying to get from me.

Q. To me depressed means a person who is down, you know, and is feeling low and down as compared to somebody who is up.

A. Well, that's it.

Q. What did you do in the way of medication or further treatment?

A. Of course I took the urine test again and checked it, get the culture to check for urine infection. Told her to continue the blood pressure pill. I suggested at that time to see a psychiatrist.

Q. Was that because of her phobia and the depression and the problems, nervous problems she had been having?

A. Right.

Q. Did you tell her the name of a psychiatrist?

A. I don't know whether I did or not.

Q. She went eventually to see a Dr. Carluccio. Is he somebody you work with?

A. Yes.

Q. Would you refer patients to Dr. Carrluccio?

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A. Yes.

Q. After you told her that there's some writing, will think it over. She responded to you that way?

A. That means she was not sure whether she wants to go or not.

Q. And she was to come back in two months, right?

A. Right.

Q. The next visit is September 27, 1980. What is that above the line? Or is that part of that earlier visit of July 25?

A. Yes.

Q. What is it?

A. That's Dalmane. Dalmane is a sleeping pill.

Q. You prescribed Dalmane. What's that, No. 30?

A. 30 is the 30 milligrams. That's the dosage.

Q. How much per day?

A. HS means at bed time. HS is at bed time. And PRN means as needed.

Q. So you gave her a prescription for a sleeping pill whenever it's needed?

A. Yes.

Q. Would I be fair in saying that she

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was having some difficulty in sleeping then?
A. Yes.
Q. September 27, 1980, what were her complaints and symptoms on that day?
A. Well, I put her condition the same, which means from previous visit she is about the same. She is still having back pain and then there's something new. There was rectal pain. She has hemorrhoids. I did a rectal exam and did not find any blood.
Q. Any other comments that you made?
A. No. The blood pressure was normal, 160 over 84 and her heart and lungs were okay.
Q. How about the prescriptions?
A. I gave her some Anusol HC for the hemorrhoids.
Q. What is that?
A. That's a suppository for hemorrhoids.
Q. There's a note next to it, looks like a chiropractor. What is that?
A. I suggested maybe she could see a chiropractor for her back pain.
Q. At that point with the back pain do you know where it was located? At one point you said upper back and this time you said back. Do

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you have any idea where it was?

A. Just back pain.

Q. Is the next visit, November 14, 1980?

A. Right.

MR. DARNELL: 14 or 4?

THE WITNESS: 14.

Q. What were her complaints and symptoms at that time?

A. Noted right leg swelling and pain since yesterday.

Q. She told you she had a right leg that was swelling and painful?

A. Right.

Q. What else did she tell you?

A. There was no trauma, which means she didn't hurt it, and she felt some pulling on the back of the right knee for six days, and that she had also occasional palpatation.

Q. When you say palpatation, is that the heart fluttering, is that what you mean by that?

A. Just means that the heart is pounding a little stronger than usual.

Q. In her case do you have any idea what was causing that?

A. No.

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Q. Would you continue with what your records show and what you can remember about that visit.

A. Her blood pressure was 142 over 90 and that her heart and lungs were okay. I found slight tenderness on the back of the thigh, but there was no calf tenderness and I didn't find any swelling.

Q. Did you make a diagnosis or did you have an impression of what the trouble was?

A. Yes. My impression is possible myalgia, muscle pain.

Q. What did you do about it?

A. I gave her some Azolid-A three times a day after eating.

Q. What is that and what effects does it have?

A. That's an anti-inflammatory.

Q. What does it do to the body?

A. We use it mainly for muscle aches and things like that.

Q. Underneath that it says, keep appointment. What does that mean?

A. That means she has an appointment, that this might be a special visit that she came because of the leg swelling.

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Q. The next visit is ten days down the road, I guess.

A. 11/22.

Q. What were her complaints and symptoms at that time?

A. That her leg still slightly painful and that she still have occasional diarrhea.

Q. Was that still part of that irritable bowel syndrome?

A. Yeah, it can come and go.

Q. Okay. What else did you do on that day?

A. I did a pelvic exam on her.

Q. What is a pelvic exam?

A. That's an internal examination.

Q. And what was the result of that?

A. It was fairly negative. Her status post-hysterectomy, which means she had her uterus removed. And I did a rectal exam which showed big external hemorrhoids.

Q. Over on the left it says annual PC, looks like annual PC?

A. Anal chem screen. That's a blood test.

Q. You were sending her for a blood test of some sort?

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A. I do it here and just send it out.

Q. What medications or what treatment did you offer to her at that time?

A. I changed her medication for the leg. I gave her Norflex this time.

Q. What is Norflex?

A. Again, it's the same, anti-inflammatory, for pain also.

Q. Inflammatory is to keep inflammation down. And what's the word for--

A. It's a muscle relaxant, too.

Q. Beneath that there's another medication?

A. Aldoril, that's her pressure medication.

Q. Anything else that you can remember at that time?

A. No.

MR. DARNELL: I missed something. The number three medication after the Anusol, what was that?

A. That's hemocult, that's a slide to check the stools.

Q. That's to check for cancer of the --

A. Yes. More of gastrointestinal.

Q. Colonal rectal?

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A. Right.

Q. What does plus X 1 mean on that?

A. One of them was positive out of the three. HO is hemocult times three. One of them came out positive.

Q. What did you do -- did you do any follow-up on that?

A. I must have done something but I don't remember now.

Q. Was there anything that ever came out of that?

A. I don't think so.

Q. Do you know for certain?

MR. DARNELL: Objection. She said she doesn't think so. Argumentative question.

Q. You can answer the question. Do you know for certain one way or the other?

A. I don't have anything else.

Q. The next visit, is that January 19, 1981?

A. Right.

Q. What were her complaints and symptoms at that time?

A. Now, I think her main complaints at that time that we talked about was her phobia again and

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that she finally went to see the psychiatrist, but she complained that the medications were too strong and not helping her and that it made her worse.

Q. Did she tell you what medication the psychiatrist had given her?

A. No.

Q. What did you do about that, if anything?

MR. DARNELL: When you say that, you mean about finding out what medication she had obtained?

MR. DROZDOWSKI: Yes. Let me withdraw that.

Q. She tells you the doctor gave me some medicine, I took the medicine and it made me feel worse.

A. Right.

Q. Did you do anything to help her condition?

A. I usually do something but at that time what I did, I don't know.

Q. Did she have any other complaints?

A. She did mention about some chest pain and occasional shortness of breath.

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Q. What did that mean to you; why did you write that down?

A. Well, whatever the patient mentioned I write it down, but I didn't elaborate so I must not have been impressed about it.

Q. What happened then? Did you do anything with regard to treatment?

A. Well, again, I continued the pressure pill and I gave her the tranquilizer again before going out. I don't know what I did with the other --

Q. What tranquilizer?

A. Azene.

Q. Is that the same one?

A. Yes, that I gave her before.

Q. Would I be correct that probably she was still continuing on with this nervousness, irritability, this depression?

A. Right.

MR. DARNELL: No. You used all three and the doctor before only used depression and nervousness. She did not indicate irritability as I recall her answer.

Q. Let me just ask you, Doctor, at some point in time in the treatment of this woman, were you ever told by Mrs. Cipollone or tell anybody

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else that Mrs. Cipollone was irritable?

A. I don't remember. Did you see it anywhere in the chart?

Q. For example, I show you what's been marked D-Lee-2 for identification, your report to a Mr. Sharbaugh of April 9, 1980. This is your report to Mr. Sharbaugh.

A. Right.

Q. Mr. Sharbaugh was her attorney for that auto accident; is that correct?

A. Yes.

Q. Did you tell her, and I read -- tell him in the report that Mrs. Cipollone, who was once a very outgoing, jolly person, had now become very nervous, irritable and unhappy due to the confinement to her house from her fear of motor vehicles?

A. Okay, so it's there.

Q. I just want to say, she continued to have irritability then.

A. All right.

Q. I think we covered the Azene, this tranquilizer.

A. Yes.

Q. I see EKG, is that the EKG that we

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marked?

A. I said within normal limits. So I did something with the chest pain.

Q. And that EKG is what's marked D-Lee-20, right, January 20, '81?

A. Right.

Q. And beneath that what is that, HO times three --

A. Yeah. Because one of the occult blood was positive, I decided to repeat it and this time it came back negative.

Q. What's beneath that?

A. DC smoking, means discontinued smoking.

Q. You told her to discontinue smoking?

A. Yes.

Q. Do you remember what she said to that?

A. I don't remember.

Q. Do you know if she did discontinue smoking?

A. I don't know.

Q. Was there anything else you recommended in the way of further examinations, maybe an x-ray or anything else at that time?

A. At that time, no. Maybe I did, I don't know if any of the x-rays showed something.

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Q. She was to come back in two months, right?

A. Right.

Q. I show you what's marked D-Lee-5, x-ray report dated January 23, 1981.

A. Okay.

Q. Are you familiar with that?

A. Yes.

Q. How does that fit into the treatment?

A. I must have ordered it on this visit because that's a few days after.

Q. Why did you order the chest x-ray at that time?

A. I don't remember why. Maybe because of the chest pain, the shortness of breath and her history of smoking.

Q. What was your concern?

A. Well, I was concerned about, of course, the heart and the lungs.

Q. What would be your concern with regard to the lungs?

A. The lungs, was there any evidence of enphysema, any evidence of abnormal shadows.

Q. What does that mean?

A. That means any spot that you might be

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concerned about.

Q. Getting down to it, does that mean lung cancer?

A. Lung cancer is one of the possibilities, sure.

Q. Did you discuss that with her at that time?

A. About what?

Q. About having an x-ray taken to see if there was anything wrong on the x-ray.

A. I probably just told her I wanted her to have a chest x-ray for a checkup.

Q. Did she show any concern at that time? Do you have any recollection?

A. I don't know.

Q. Looking at D-Lee-5, on the bottom there is written here, called 1:30. Do you know what that means?

A. Means I called the patient and discussed with her about the x-ray.

Q. Do you remember what you told her?

A. Must have just told her what was found on the x-ray.

Q. Which was? What was found on the x-ray?

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A. There was some enlargement of the heart with sclerotic and tortuous aorta. No active pulmonary infiltrate.

Q. What does that mean?

A. That means there was nothing in the lung.

Q. It was clear?

A. Nothing active. The lung fields are clear without evidence of infiltrate. And osteoarthritis of the dorsal spine.

Q. Do you know what she said to you when you gave her this information?

A. I don't know what she said.

Q. Who was Dr. Palazzo?

A. He is one of the radiologists who does x-rays.

Q. Would the x-ray be taken at his office?

A. Yes.

Q. You wouldn't happen to know where this x-ray is, would you?

A. He would have it.

Q. In any event, you don't have that x-ray?

A. I don't have the x-ray.

Q. You then saw her again on February 17;

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is that correct?

A. Right.

Q. What were her symptoms and complaints?

A. Her condition as I said was the same.

Q. So everything she had before had continued?

A. Right. Diarrhea still on and off.

Q. Would that relate back to the irritable bowel syndrome?

A. Right. She has about eight days now of right upper and right lower quadrant pain that radiates down the right leg. And that she has urine frequency again.

Q. What does this mean to you, Doctor?

A. Again, the right upper and lower quadrant pain in the stomach in people who have irritable bowel syndrome, they can have pain from one place to another in the stomach, in the abdomen. The radiating down the right leg might be something important. We see that sometimes in people who had kidney stones. And then with the urine frequency, I ordered the urinalysis to check that out.

Q. Anything else that you did for her?

A. I gave her some Donnatal, which is an

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anti-spasmodic again.

Q. How does that work?

A. That's very similar to Librax. It's a combination of anti-spasmodic with a little tranquilizer. We again use it in people with irritable bowel syndrome.

Q. Anything else you can remember?

A. I put there, try biofeedback.

Q. What's that?

A. It's a way of trying to control your body with the mind. We suggest it sometimes in people who are nervous and tense and who has a lot of complaints in their body. We try to suggest this. But this has to be done through the psychiatrist, to see if their mind can control the body and make them feel better.

Q. As far as you were concerned you thought that this would be a weapon or something that should be used in treating her condition, the nervousness and tension and everything she had?

A. Right.

Q. She was to return in two months and I see according to your records she missed an appointment in March? Down at the bottom, March 16th?

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A. Yes.

Q. So the next time you saw her was March 20th; is that right?

A. Right.

Q. Were her complaints the same as they were before?

A. Well, she had something new this time. She had a boil at the perianal area for two days, but it has drained by itself and she's taking Ampicillin.

Q. What's Ampicillin?

A. It's antibiotics.

Q. Her other complaints, do they continue on the same?

A. I didn't write anything about that.

Q. Anything else you can remember?

A. I felt that she had had a healing abscess and advised her to continue the antibiotics and her pressure medication and to keep her appointment.

MS. SAMMONS: Is that the boil you're referring to when you say healing abscess?

THE WITNESS: Yes.

Q. Aldoril, what is that again?

A. That's the pressure pill.

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Q. You saw her on June 15, 1981; is that correct?

A. Right.

Q. What was her condition, her complaints and symptoms at that time?

A. She felt sick for three days, that's what she said. She was nausous, but there was no vomiting, and she had diarrhea today, which means the day that she came to see me. She had palpatation and headache, some breathing difficulty and had some pain at the substernal area. And again, back pain.

Q. What did this mean to you?

A. Which one are you referring to?

Q. These complaints. When she came in with these complaints, what did you think they were?

A. Well, there are a lot of nonspecific complaints and they're multi -- it involves different parts of the body, the palpatation, headache, pain in the back, stomach problem. You know, usually if the patient has this much complaints in different parts of the body, you really can't pinpoint what's wrong with her.

Q. She was complaining of diarrhea?

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A. Yes.

Q. Was that the continuation of this irritable bowel syndrome?

A. Right.

MR. DARNELL: Are you asking the doctor whether she made a diagnosis of a disease based upon these symptoms?

MR. DROZDOWSKI: I'm talking about what the doctor felt was the cause of these conditions. That's what we're doing.

MR. DARNELL: Well, you didn't quite get to that point.

Q. You understood my question, didn't you, Doctor?

A. Vaguely.

Q. My question was in your opinion was this diarrhea a continuation of this earlier irritable bowel syndrome?

A. It's possible that it's a continuation.

Q. The palpatations and headache, do you know what was causing that?

A. Again, it was so vague, I don't think I have a definite diagnosis at that time.

Q. Would her nervousness and irritability and anxiety play a part in causing

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those?

MR. DARNELL: Objection. You're asking her for a diagnosis and I don't know that the doctor made a diagnosis.

Q. Did you understand my question, Doctor? Could you repeat my question.

(Record read by the reporter)

A. It could.

Q. The breathing difficulty and pain at the substernal area, what did you think that was or what caused that?

A. Again, the symptoms were so vague at that time. I don't have a definite diagnosis as far as the cause of that.

Q. What would you have ruled out?

A. Well, I definitely don't think it was cardiac, from my note. The cardiac would be the most important thing to rule out.

Q. Was she having anything that you thought was a lung condition?

A. Well, see, difficulty breathing again is very vague. It can be lung, it can be heart.

MR. DARNELL: And let me object on the basis of lack of a foundation in view of the fact that the note also says, lungs clear.

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Q. You examined her, right?
A. Right.
Q. What did you find?
A. I found her heart and lungs were normal, nothing abnormal that I found. Her blood pressure was very good, 120 over 80.
Q. Now, do you have a recollection or do your records show what you prescribed and what you did in the way of treatment?
A. Again, I continued the Aldoril, which is doing very well on her.
Q. That's for the blood pressure?
A. That's for the blood pressure, yes. I gave her Librax again, which was for the irritable bowel.
Q. And that's a combination of --
A. Tranquilizer and anti-spasmodic.
Q. That's to keep her calm?
A. Right.
Q. To change her mood? Or to keep her mood down?
A. Well, it's to keep her calm.
Q. And what else?
A. And Motrin, which I gave her I would say mainly for the back pain.

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Q. And Motrin is an anti-inflammatory and an analgesic?

A. That's right.

Q. Did you ever see her after this?

A. No.

Q. So we get this straight, when you last saw her, the medication she was on was Aldoril; is that right?

A. Right.

Q. And how much and how often was that?

A. Aldoril 15 twice a day.

Q. And Librax?

A. Right.

Q. How much and how often?

A. One tablet four times a day.

Q. And what else?

A. Motrin 400 milligrams three times a day after eating.

Q. Was she taking anything else that you know of?

A. I don't know.

Q. I think you looked at D-2, which was the report you sent to Mr. Sharbaugh. You looked at that before. Just take a look at it again. Have you read that, Doctor?

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A. Yes.

Q. That's something you wrote to Mr. Sharbaugh, her attorney, to accurately tell him what her condition was and her complaints were as of April 9, 1980; is that correct?

A. Right.

Q. I show you another one to Mr. Sharbaugh marked D-Lee-3. Take a look at that.

A. Yes.

Q. And that told Mr. Sharbaugh accurately what her complaints and problems were as of March 17, 1981; is that correct?

A. Right.

Q. So she had continued from the time she saw you until March of '81 to have this nervous, irritable and depression problem, right?

A. Yes.

Q. Then I show you D-4, which is your letter to a Mr. Gisser who was with the law firm at that time representing Rose Cipollone for not the auto accident case but a case against the cigarette companies.

Doctor, in that letter to Mr. Gisser did you set forth accurately what you thought were the problems that your patient was having, until

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the time she no longer came to see you?
A. Well, I gave him whatever I had on the chart and just summarized it.
Q. Did you ever get any reports from Dr. Carluccio?
A. No, I didn't get any written report from him.
Q. Anybody else send you any reports that you used in caring for Mrs. Cipollone?
A. If anything, it would be here.
Q. And it's not here so you don't have anything?
A. No.
Q. Do you know while you were treating her whether she was being treated by anybody else for her conditions?
A. I don't know.
Q. Did she ever mention a Dr. Lowy (phonetic) to you? Does it ring a bell?
A. Doesn't ring a bell.
MR. DROZDOWSKI: I don't have any other questions other than I'd like to make copies of some of this stuff.
MR. DARNELL: Let me make a suggestion, off the record.
(Deposition adjourned at 4:05 p.m.)

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C E R T I F I C A T E

I, NANCY C. BENDISH, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination the witness and/or witnesses were sworn by me to testify the truth, the whole truth and nothing but the truth.

I do further certify that the foregoing is a true and accurate computer-aided transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither of counsel nor attorney for any party in this action and that I am not interested in the event nor outcome of this litigation.

_____

Notary Public of the State of New Jersey
Certificate Number XI00836
My commission expires May 11, 1991

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A. No, I didn't get any written report from him.

Q. Anybody else send you any reports that you used in caring for Mrs. Cipollone?

A. If anything, it would be here.

Q. And it's not here so you don't have anything?

A. No.

Q. Do you know while you were treating her whether she was being treated by anybody else for her conditions?

A. I don't know.

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MR. DROZDOWSKI: I don't have any other questions other than I'd like to make copies of some of this stuff.

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(Deposition adjourned at 4:05 p.m.)

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JURAT

I, NELLIE LEE, M. D. do hereby certify that I have read the foregoing transcripts of my testimony on December 11, 1986, and have signed it subject to the following changes:

PAGE	LINE	CORRECTION

DATE

Sworn and subscribed to before me this day of

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C E R T I F I C A T E

I, NANCY C. BENDISH, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination the witness and/or witnesses were sworn by me to testify the truth, the whole truth and nothing but the truth.

I do further certify that the foregoing is a true and accurate computer-aided transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither of counsel nor attorney for any party in this action and that I am not interested in the event nor outcome of this litigation.

Nancy C. Bendish

Notary Public of the State of New Jersey
Certificate Number XI00836

Dated: _____

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